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Attorney for Defendants 110 Sand Company, C. Broman Transportation Corp., and Farmingdale Sand Corp.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

v.

110 SAND COMPANY, a partnership;
C. BROMAN TRANSPORTATION
CORP; FARMINGDALE SAND
CORP.; and BROAD
HOLLOW ESTATES, INC.

Defendants.
-----X

Case No. 09-4209

(Seybert, J.) (Boyle, M.J.)

**FIRST REQUEST FOR PRODUCTION OF DOCUMENTS BY DEFENDANTS
TO PLAINTIFF UNITED STATES OF AMERICA**

Pursuant to Federal Rule of Civil Procedure 34, and the Court's April 16, 2010 Scheduling Order, Defendants 110 Sand Company, C. Broman Transportation Corp., Farmingdale Sand Corp., and Broad Hollow Estates Inc. (collectively, the "Defendants"), by and through its undersigned counsel, serves its First Set of Document Production on Plaintiff United States of America ("Plaintiff"). Defendants request that Plaintiff produce for inspection and copying **on or before June 30, 2010** pursuant to the Court's Scheduling Order.

INSTRUCTIONS

In responding to these Requests for Production of Documents, the following instructions shall apply:

A. The obligations imposed upon you by Fed.R.Civ.P. 26 and 34 are hereby incorporated, including but not limited to the duty to supplement imposed by Fed.R.Civ.P. 26(e).

B. These requests for production are directed to the Plaintiff, and concern all information within the Plaintiff's custody and control, including information any employee, contractor, consultant or attorney of the Plaintiff possesses; information in the possession of any other person acting on the Plaintiff's behalf or otherwise subject to the Plaintiff's control.

C. If the Plaintiff lacks information to respond to a particular request for production, in whole or in part, the Plaintiff shall state or identify: (1) the currently available information; (2) any currently unavailable information; (3) the efforts the Plaintiff has taken, or will take, to obtain the currently unavailable information; and (4) when the Plaintiff expects to obtain this information. Further, if the Plaintiff believes any other individual or entity may have information that responds to a specific request, in whole or in part, the Plaintiff shall provide the

individual or entity: (1) the name, address and telephone number and (2) a brief description of the information the Plaintiff believes the entity or individual possesses.

D. Whenever in these requests for production the Plaintiff is directed to produce or “identify” a “document,” the Plaintiff shall, besides providing the document itself (if asked to produce), state or identify the following: (1) the date the document was prepared; (2) the name, address and telephone number of each author or signatory; (3) the name, address and telephone number of each recipient (both addressee and recipients of copies); (4) the document type (*e.g.*, letter, memorandum, report, etc.); (5) the document title; (6) the document’s control number or Bates number; and (7) the name, address and telephone number of the document’s custodian.

E. If the Plaintiff no longer possesses any document the Defendants request, the Plaintiff shall state or identify: (1) the date the document was prepared; (2) the name, address and telephone number of each author or signatory; (3) the name, address and telephone number of each recipient; (4) the document type (*e.g.*, letter, memorandum, report, etc.); (5) what was done with the document; (6) the name, address and telephone number of each individual responsible for, or otherwise involved with, transferring or disposing of the document; (7) the reason(s) the document was disposed of or transferred; and (8) the name, address and telephone number of the document’s custodian, if known.

F. If the Plaintiff believes any information the Defendants request is privileged and/or protected, in whole or in part, the Plaintiff shall provide the information required under Local Rule 26.2(a)(2)(A); and shall state the Document Request to which each document and/or communication is responsive.

G. If the Plaintiff deletes (i.e., redacts) anything from a document it produces in response to these requests for production, the Plaintiff shall state or provide the following: (1) a summary of the deleted information; (2) the reason(s) for deleting the information; and (3) the name, address and telephone number of each person responsible for, or otherwise involved with, deleting the information.

H. The Plaintiff shall respond to each of these requests for production to the fullest extent possible, and in good faith, preserving any valid objections the Plaintiff may have. The Plaintiff may further ask the Defendants' attorney to clarify or limit any request for production the Plaintiff believes is vague or unduly burdensome.

I. Whenever these requests for production use any word in the plural, the Plaintiff shall understand the word to include the singular as necessary to make the request for production inclusive rather than exclusive. Further, whenever these requests for production use any word in the singular, the Plaintiff shall understand the word to include the plural as necessary to make the request for production inclusive rather than exclusive.

J. Whenever these requests for production use any word in the masculine, the Plaintiff shall understand the word to include the feminine as necessary to make the request for production inclusive rather than exclusive. Further, whenever these requests for production use any word in the feminine, the Plaintiff shall understand the word to include the masculine as necessary to make the request for production inclusive rather than exclusive.

K. Verbs written in the present tense shall also be taken to mean and include the past. Verbs written in the past tense shall also be taken to mean and include the present.

L. Whenever these requests for production use the word “and” or the word “or”, the Defendant shall understand the word conjunctively or disjunctively as necessary to make the request for production inclusive rather than exclusive.

DEFINITIONS

1. “BACT” refers to Best Available Control Technology as defined in Title 40, Part 52.21 of Code of Federal Regulations and as interpreted by administrative and judicial bodies.

2. “Communication” as defined under Local Rule 26.3(c)(1).

3. “Concerning” as defined under Local Rule 26.3(c)(7).

4. “Document” as defined under Local Rule 26.3(c)(2).

5. “Employee” means any past or present employee, broker, manager, officer, secretary, attorney (associate or partner), paralegal, accountant, agent, consultant and/or an independent contractor.

6. “Identify” means, when used in reference to:

a. a natural person: as defined under Local Rule 26.3(c)(3).

b. a company, corporation, association, joint venture, sole proprietorship, firm, partnership or any other business or legal entity which is not a natural person: its full name now and at the time in question; date of incorporation or juridical status; description of type of entity now and at the time in question; date and place of formation; current juridical status; nature of business activities in which it is engaged or was engaged at the time in question;

c. a document: as defined under Local Rule 26.3(c)(4).

d. an oral statement or communication:

1. the date and place where uttered;
2. the place where received;
3. the substance thereof;

4. the means or medium employed for transmission;

5. the identification of each person to whom such statement or communication was made, each person who was present when such statement or communication was made, and each person who was present when such statement was received;

e. an admission or declaration:

1. the date made; the name and address of the place where the admission and/or declaration was made;

2. the identity of the person who allegedly made the admission and/or declaration;

3. the identity of the person to whom the admission and/or declaration was made;

4. the exact contents of the admission and/or declaration;

5. whether the admission and/or declaration was oral or written;

6. the identification of any document pertaining to each such written admission and/or declaration; and

f. a written statement:

1. the names and addresses of the persons who gave statements;

2. the exact time, date and location where statements were made;

3. the names and addresses of the persons who obtained such statements;

4. if recorded, the nature and present custody of said reporting;

5. the names and addresses of any witnesses to statements;

6. the identification of all documents which discuss, reflect or relate to statements.

7. “Information” shall be expansively construed and shall include, but not be limited to facts, data, opinions, images, impressions, and concepts.

8. “Landfill” refers to the landfill located at 136 Bethpage-Spagnoli Road, Melville, New York.

9. “Person” as defined under Local Rule 26.3(c)(6).

10. “Prevention of Significant Deterioration” or “PSD” is defined under the Act and under the implementing regulations of Title 40, Part 52.21 of the Code of Federal Regulations, and as interpreted by administrative and judicial bodies.

11. The terms “regarding,” “regards,” “relative to,” or “relating to,” “referring to” or “reflecting” or any respective derivative thereof, as used herein, include and shall mean referring to, responding to, pertaining to, connected with, comprising, memorializing, embodying, commenting on, discussing, showing, describing, reflecting, recording, evidencing, analyzing, constituting, refuting, disputing, rebutting, controverting, contradicting, representing, supporting, stating, citing and inferring.

12. “Statement” means any oral or written expression however communicated or recorded.

13. “You,” “your” and “yourself” refer to the party to whom the following Interrogatories are addressed, and its agents, representatives, officers, directors, employees and predecessors.

14. “USEPA” shall mean the United States Environmental Protection Agency.

DOCUMENT REQUESTS

1. Produce any and all Documents that document or discuss the amount of hydrogen sulfide emitted from the Landfill each year from 1982 to the present.

2. Produce any and all Documents that document or discuss the amount of sulfur dioxide emitted from the Landfill each year from 1991 to the present.

3. Produce any and all Documents that discuss, evaluate, or analyze the installation, use or efficacy of the Paques Thiopaq system in landfills to control hydrogen sulfide emissions or reduce sulfur dioxide emissions from a landfill flare.

4. Produce any and all Documents that document or discuss each and every instance that USEPA has made a BACT determination with respect to hydrogen sulfide emissions at a landfill.

5. Produce any and all Documents that document or discuss each and every instance that USEPA has made a BACT determination with respect to sulfur dioxide emissions at a landfill.

6. Produce any and all Documents for each and every landfill that has installed hydrogen sulfide removal, control or monitoring technology based on a BACT determination made by USEPA.

7. Produce any and all Documents for each and every landfill that has installed sulfur dioxide removal, control or monitoring technology based on a BACT determination made by USEPA.

8. Produce any and all Documents pertaining to each and every landfill that has applied for a PSD permit on the basis of actual or potential hydrogen sulfide emissions.

9. Produce any and all Documents pertaining to each and every landfill that has applied for a PSD permit on the basis of actual or potential sulfur dioxide emissions.

10. Produce any and all Documents that contain or relate to or make reference to communication between USEPA and New York State Department of Environmental Conservation that address, discuss, evaluate or assess (a) the Clean Air Act violations that have allegedly occurred at the Landfill, (b) the Landfill flare, (c) air pollution permits for the Landfill, or (d) hydrogen sulfide releases from the Landfill.

11. Produce any and all Documents, including formal guidance, draft guidance, letters, emails or other communications that document how USEPA advises landfills to address hydrogen sulfide emissions.

12. Produce any and all Documents concerning how hydrogen sulfide emissions may impair visibility.

13. Produce any and all Documents concerning how hydrogen sulfide emissions may have an adverse impact on soils.

14. Produce any and all Documents concerning how hydrogen sulfide emissions may have an adverse impact on vegetation.

15. Produce any and all Documents (i) pertaining to air pollutant emissions from, (ii) communications between USEPA and any other person or entity with respect to, and (iii) USEPA enforcement actions against (a) Lordstown Construction Recovery LLC landfill in Warren, Trumbull County, Ohio, (b) Brookhaven Landfill, in Brookhaven New York, and (c) Allied Waste (Republic Services) Landfill in Findlay Township, Pennsylvania.

16. Produce any and all documents referred to, relating to, used, relied upon, or requested to be identified in answering Defendants' First Set of Interrogatories Directed to Plaintiffs.

17. Produce any and all Documents that support or refute the basis for the Plaintiff's injunctive relief claims as outlined in the Complaint.

18. Produce any and all Documents embodying or concerning communications between or among the Plaintiffs and Defendants that are not privileged which address, discuss, evaluate or assess the Clean Air Act violations that have allegedly occurred at the Landfill.

Dated: New York, New York
May 21, 2010

Respectfully submitted,

K&L GATES LLP

By: /s/ B. David Naidu

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*Attorney for Defendants 110 Sand Company, C. Broman
Transportation Corp., and Farmingdale Sand Corp.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 21, 2010, I have caused a true and exact copy of the foregoing **First Request for Production of Documents by Defendants to Plaintiff United States of America** to be served both electronically and by first class mail on counsel of record as follows:

Deborah B. Zwany, Esq.
David Eskew, Esq.
United States Attorneys Office
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201-1820

Attorneys for Plaintiff United States of America

/s/ B. David Naidu